

Office of Chief Counsel  
Internal Revenue Service

## memorandum

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date:

to: Marshall Hunt, Taxable Travel Coordinator  
Michigan District

from: District Counsel, Michigan District, Detroit

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subject: Taxable Travel Reimbursement

This memorandum is in response to your request for advice on April 19, 2000, regarding the issue of taxable travel reimbursement. This issue is being coordinated with our National Office. The advice in this memorandum is subject to post-review in the National Office, which we will expedite. If you have any questions, please call the undersigned at (313) 237-6426.

### DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

### Issues

I. Whether reimbursement of travel costs in the following scenarios would be taxable:

1. A consulting firm has a continuing engagement with client A, which involves a contract extending beyond one year. Employees of the consulting firm work at Client A's work location during the engagement; however, they have an "inventory" of other clients, each with contracts extending beyond one year, so they work a few days a month at client A's location. While they administratively report to a headquarters office, normally, they drive from their residence to the site and return, and are on site the entire day.

2. A machinery sales company has long-term continuing maintenance contracts extending beyond one year to provide routine maintenance to customers in a metropolitan area. Each maintenance person has 20 accounts that they visit once a month. While they administratively report to a headquarters office, normally, they drive from their residence to the site and return, and are on site the entire day to service all machines on site.

### Proposed Conclusions

I. Reimbursement of travel costs described in scenarios 1. and 2. above would likely be taxable. However, specific facts and circumstances of particular cases would determine the tax treatment for individual taxpayers.

### Facts

On March 13, 2000, Bob Wenzel, Deputy Commissioner of Operations issued a memorandum addressing the issue of the taxability of reimbursements for local travel and transportation costs incurred by IRS personnel. The March 13, 2000, memorandum provided a number of factual scenarios and discussed the taxability of travel reimbursement provided to the individuals described in the scenarios. The factual scenarios outlined in Mr. Wenzel's memo were substantially similar to scenarios provided in a memorandum from Lewis J. Fernandez, Deputy Assistant Chief Counsel, IT&A to Thomas W. Wilson, Jr., Assistant Commissioner, Examination, dated March 10, 2000.

The scenarios described in the March 10 and 13, 2000 memos above were developed to illustrate the application of Rev. Rul. 99-7, I.R.B. 1999-5, and related Internal Revenue Code sections regarding whether reimbursed travel expenses were taxable to Internal Revenue Service employees in those hypothetical situations.

The hypothetical examples you presented to this office are substantially similar to scenarios four and five of the memorandums noted above and represent hypothetical taxpayers other than Internal Revenue Service employees. You indicated that scenarios four and five are the most troubling in terms of applying the intent and spirit of Revenue Ruling 99-7. Scenarios four and five involve hypothetical situations in which an overall case cycle and employee involvement will last more than one year, but the employee works at multiple work locations and the employee's activities at each of these locations are occasional.

### **Discussion**

Revenue Ruling 99-7 provides that daily transportation expenses incurred by an employee in traveling between the taxpayer's residence and a work location are deductible with respect to travel between the residence and a temporary work location outside the metropolitan area where the taxpayer lives and normally works. This is an exception to the general rule that employee commuting expenses from the residence to the place of employment are nondeductible personal expenses.

If employees receive reimbursement from their employer for daily transportation expenses from their residence to a work location which is not a "temporary work location", such reimbursement is taxable. Rev. Rul. 99-7 establishes the following three rules for determining whether a work location is a "temporary work location":

If employment at a work location is realistically expected to last (and does in fact last) for 1 year or less, the employment is temporary in the absence of facts and circumstances indicating otherwise.

If employment at a work location is realistically expected to last for more than 1 year or there is no realistic expectation that the employment will last for 1 year or less, the employment is not temporary, regardless of whether it actually exceeds 1 year.

If employment at a work location initially is realistically expected to last for 1 year or less, but at some later date the employment is realistically expected to exceed 1 year, that employment will be treated as temporary (in the absence of facts and circumstances indicating otherwise) until the

date that the taxpayer's realistic expectation changes, and will be treated as not temporary after that date.

The principles of Rev. Rul. 99-7 and the authority cited therein were applied to several scenarios, including scenarios four and five upon which your request for advice is based, in the various memoranda cited above. The conclusions with respect to scenarios four and five were that the reimbursement of daily travel expenses in those hypothetical situations would be taxable income to the employees since the work location was not a "temporary work location" as defined in Rev. Rul. 99-7. Since the specific hypotheticals described in your request for advice are substantially similar to scenarios four and five set forth in the various memoranda, a similar conclusion would be anticipated, i.e. the travel reimbursement in your hypotheticals would be taxable income to the employee. It is important to note, however, that the various memoranda referenced above were issued for general information purposes only and were meant to be illustrative in nature. Since the determination of travel reimbursement taxability is extremely factual in nature and will depend on the facts and circumstances of any particular case, our office is unable to render legal advice with respect to hypothetical fact patterns. Neither the memos noted above nor this response to your request for advice are intended to be conclusive as to the tax consequences for any specific taxpayer. Our office is available to review specific facts related to actual examinations which may present this issue and offer any advice or guidance which you may require.

Should you have any questions or concerns regarding this matter, please contact the undersigned attorney at (313) 237-6426.

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District Counsel

By: \_\_\_\_\_  
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